Supreme Court of the United States.

No. 319.

CHARLES T. POLLARD, PLAINTIFF IN ERROR,

vs.

JOHN F. BAILEY, ASSIGNEE IN BANKRUPTCY.

Error to the District Court of United States for Middle Alabama.

Judd & Detweiler, Printers.

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STATEMENT OF THE PLEADING.

The defendant in error (Bailey) sued to recover the sum of $16,909, the sum of bills of the Central Bank of Alabama, from the plaintiff (Pollard) as the owner of 200 shares of stock in that bank, under a clause in the charter of the bank which prescribed "that the stockholders shall be respectively bound for all of the debts of the bank in proportion to their stock holden therein." The declaration contained averments that the bank had ceased to do business since 1868, and that no demand had been made of the bank for the payment of the bills, and that a demand had been made of the defendant, who was a stockholder of the bank during the period the plaintiff had been the owner. (Rec. 1.)

The defendant pleaded in abatement to the suit, that in

the year 1869, that a bill had been filed in the court of chancery of the State, in the Montgomery district, by a number of the bill-holders under the 20th section of the charter of the bank for a settlement of its affairs, for an injunction upon its proceeding any further under its charter, and for the appointment of a receiver; that the court had declared the insolvency of the bank; had directed its liquidation, and had appointed a receiver. The plea further states that the receiver, in 1870, had united with certain bill-holders, who filed a bill in pursuance of the 21st section of the bank charter, for themselves and other creditors to compel the plaintiff and other stockholders to pay the debts of the bank under the charter; and that by these proceedings the court of chancery, under these sections of the charter, had acquired and were then exercising full control over the liquidation of the affairs of that bank, and that the debts involved in the bill included that contained in this suit. There was a demurrer to this plea, which was sustained. The plaintiff (Pollard) demurred to the declaration, which was overruled.

The plaintiff pleaded the matter of the plea in abatement in bar, the general issue, and other pleas as to the extent of the liability of Pollard. All of these special pleas were demurred to and the demurrers sustained. The case was then submitted to the jury upon a statement of facts, and a verdict was rendered upon a direction from the court that the plaintiff here was liable for the whole extent of the demand.

The plea in abatement, (Rec., p. 13;) the demurrer to the declaration, (Rec., p. 12;) the pleas in bar, (p. 15;) the judgments in the bill of exceptions, (p. 26;) the agreed facts, (p. 17, 24, and verdict at p. 25.)

ASSIGNMENTS OF ERROR.

That the interpretation to be placed on the clauses of the charter of the bank is that the stockholder is liable for all of the debts of the bank, in proportion that his shares of stock bears to the whole capital of the bank, and for no more; that this liability is a liability to the creditors of the bank collectively, and to be ascertained by a liquidation of its affairs, under the 20th and 21st sections of the act, after the deficiency in the assets of the bank shall have been ascertained, and the aliquot share of the stockholders is ascertained; that these sections of the charter afforded a remedy which has been legally employed by parties competent to do so by their terms, and that the court of chancery in the State of Alabama had jurisdiction over the subject-matter, had obtained possession of the assets of the bank, and its officer had commenced proceedings against the defendant in the lawful exercise of authority conferred by the charter of the bank; and that this state of facts authorized the plaintiff in this suit to plead them in abatement, or in bar to this suit; and that the district court erred in its judgment overruling the defences thus made to the suit.

2. That the defendant was not authorized to maintain his action against the plaintiff, in the district court, upon the facts pleaded in abatement and in bar to the same.

3. That the charge of the court to the jury was erroneous, upon the matter stated, in the facts agreed to, and submitted to the jury.

ARGUMENT AND CITATION OF AUTHORITIES.

The clause in the charter of the bank is article 2, § 16.

Supposing the bank to be insolvent, and its creditors numerous, as is shown to be the case, it is difficult to understand how one creditor, B, can select one stockholder, P, the owner of $\frac{1}{1000}$ of the stock subscribed for, and collect his entire debt, to the exclusion of every other creditor. The debts of the bank amounted to $\frac{1}{3}$ of the whole capital subscribed for. The defendant, Bayley, claims to have less than $\frac{1}{100}$ of that debt; he brings his suit, without demand of the debt of the bank, against possibly the only solvent stockholder, before the liquidation of the bank's affairs. The obligation of the stockholder is not coextensive with obligation of the bank. On the contrary, it is limited to a contribution according to the number of shares held by them, and for the proportion that their indebtedness bears to all of the debts proved to exist. Every creditor of the bank is equally interested in this contributary share in proportion to the amount of his claim. It follows, therefore, that there must be an ascertainment of the debts; of the contributary share of each stockholder; and the apportionment of that contributary share among the mass of creditors.

Thus it is obvious that no one creditor can bring a suit against a particular shareholder for the amount of his demand. That this was the intention of the Legislature is apparent from a consideration of the 20th and 21st sections of the act. These sections provide a summary remedy for the settlement of the affairs of an insolvent corporation. The 20th and 21st sections allows any creditor for a debt exceeding $100 to provoke the interposition of the court of chancery. They provide for the declaration of insolvency by a decree; for the appointment of a receiver; for a collection of the assets and their distribution among the credi-

tors, the bill-holders to have a preference; for an assessment of the stockholders, which assessment is to be collected by the receiver from them. This summary remedy may be used, but the 22d section does not supersede any other appropriate proceeding of the creditors against the bank, or to prevent the Legislature from providing other remedies. All of the questions arising in this record have been adjudicated in courts of high authority; two cases determined in the supreme court of Massachusetts, reported in 10 Metcalf Rep., pp. 525 to 580, contain very full and exhaustive discussions on the subject. The revised statutes of Massachusetts provided that the holders of stock in a bank when its charter expires "shall be liable in their individual capacities for the payment and redemption of all bills which may have been issued by said bank, and which shall remain unpaid, in proportion to the stock they may respectively hold at the dissolution of the charter." Judge Wilde, in his opinion, 10 Met., 531, determined that a separate creditor could not file a bill. His reason is, "if the bill-holders may be allowed to maintain separate suits, some may recover payment of their demands in full, while other creditors, having claims equally equitable, may be unable to obtain any payment or satisfaction whatever."

The court decided that the stock held by the bank was to be considered, and that the separate liability of the stockholders was not increased, because all of the stock had not been subscribed; and that the capital stock of the bank, in the aggregate, was to be considered in the apportionment of the liability among the stockholders. (10 Met., 556–7.) "We think," the court say, "that no stockholder can be responsible beyond the proportion which the number of shares held

by him bears to 1,000, the whole number into which the capital was divided."

The court say, the statute declares that holders of stock shall be liable in their individual capacities for the redemption of all unpaid bills, "in proportion to the stock they may *respectively* hold at the dissolution of the charter. The term *respectively* indicating the different proportions for which they may be holden, and as clearly indicates a several liability." As a consequence he holds that the stockholder is not bound for more than his *pro rata* share of the debts, and that the insolvency, absence, or other cause of deficiency in the payment by some shareholders will not increase their share of contribution. (10 Met., 558–559.)

This view of the 2d article of section 16, is fortified by the terms of the 20th and 21st articles. The entire charter is to be construed together, and effect is to be given to every part of the act. The extent of the liability and the manner of its enforcement is to be collected from the entire act, and all of the modifications and limitations upon it, are to be allowed. It is a statutory liability and will be restrained to its literal import. (Sedgewick on Stat. and Const. Law, 318, 319, 147, 351.)

The plaintiff by subscribing for stock, assumes the liability for the debts of the bank, according to the terms, and in the manner defined by the charter. The 20th and 21st sections prescribe the form and manner of liquidation, and that the assets of the bank shall be collected, distributed, and that the liability shall be then apportioned and paid. The liability of the stockholder is not an immediate, but an ultimate, liability, not to the individual creditor, but to the mass of creditors.

The aim of the Legislature was to secure a sufficient fund for the business of the bank in the first instance, and to secure its stability. They required a payment of one half of the subscriptions in gold and silver. It was to have on hand one fourth of its circulation in gold and silver at all times. The bank was to make returns and was open to examination. In case of protest, their notes were to bear interest at the rate of 12 per cent. per annum, and in case of insolvency the court of chancery was to provide for the liquidation of its affairs and a distribution to be made of its assets according to the rights of all of the parties; that the holders of the bills should be called in and their demands paid, and "that after the assets of the bank are exhausted, if they be not sufficient to pay all debts and liabilities, a further call shall be made on the shareholders of the bank for further payment of capital over and above the sum of one hundred dollars which shall be apportioned among all the shares of stock, as well of the individual stockholders as of the State. Each shareholder shall pay under the order of the court the sum or proportion due on his shares of stock." (Record 11, § 21.)

The liability of the stockholder becomes available in this manner to the creditors of the bank.

In the case of Lowry *vs.* Inman, (46 N. Y. Rep, 120,) there is a discussion upon the effect of clauses of this description. The court say, that in that case they were to consider every part of the act touching the liability of stockholders, or their property, and, giving the words their usual and ordinary signification, to ascertain whether the intent was to create a general personal liability, but to charge the property of the stockholders, not generally, or by the usual

and ordinary process, but conditionally, and by a peculiar or unusual procedure.

That the operation and effect of the statute, or the liability of the stockholder which is measured by it, cannot be extended by implication. There is no implied undertaking of the defendant as a stockholder of the bank; and there is no obligation resulting from the relation, other than such as is expressed in terms, or by necessary implication in the act of incorporation.

The plaintiff must bring the case within the four corners of the instrument or fail in the action. What need of all of this machinery in the 20th and 21st sections, if any bill-holder can sue any stockholder upon any failure of the bank to pay the bills, or upon its insolvency?

The case of the Bank of Poughkeepsie *vs.* Ibbatson, 24 Wendell, 473, which has been the parent of much of the confusion which prevails in the authorities on this subject, remains to be considered. This case was on a demurrer to the declaration. The case presented was a recovery against a corporation, and a return of no property, and a suit against a stockholder on the statute liability that the corporators should be individually liable to the extent of the stock.

The court held that the statutory liability was a legal liability, and might be enforced by an individual creditor against an individual corporator, and this is the extent of the case.

It may be admitted that were there only one creditor and many stockholders that he would not be compelled to go into chancery for relief. The relief is unquestionably a relief at law, and the liability legal, because created by statute.

It is a several liability, too, and non-joinder could not be

pleaded. The case can be defended if confined to the facts apparent on the record. The complication arises, when it is shown that there are hundreds of persons who have an essential interest in this fund, viz., this stockholder's liability. Were every one of them to join in the suit at law, there could be no verdict, for each one has a separate debt, and there can be no severance in the verdict whereby each should have his separate amount. They might appoint a trustee, and unquestionably all the bill-holders might thus recover, leaving to the trustee to make the distribution after the recovery. A suit at law may be brought for a specific legacy without objection, but in the courts of the United States, where the division of law and equity is preserved, the suit of residuary legatees against an executor—much less against the debtors of the succession for account—would be an anomaly, and still more so of one residuary legatee for his share in the assets remaining, and against a debtor of the estate for an amount equal to his supposed share in all of the residuum.

The remedies afforded by a court of law are not adequate to a full and exact ascertainment of the rights, and to the administration of justice, among numerous parties. It has no means to alter the relations of parties after the suit is brought, nor to call in other parties who have an interest in the subject or object of the suit. Hence the creation of a court of chancery and the peculiarity of its forms of procedure. No court is entitled to proceed in cases in which it cannot do justice. If justice and right do not lie at the foundation of its proceedings—of its judgments, it ceases to be a court, for a court is a place where justice is judicially administered. The cases cited from 10th Metcalf present

the conditions of fact which were wanting in the case reported in the volume above cited.

In addition to this altered condition of fact, there appears in the record, both by plea and admission of fact, that a court of chancery had possession of the corporate property, and had brought the corporators before it under its general jurisdiction as a court of chancery and the specific jurisdiction conferred by the charter of the bank.

II.

The first pleading by the defendant, Pallord, in the district court was a plea in abatement found Record 15, folio 42; then a demurrers, R. 14.

We have considered the case upon the general merits; we shall now consider this plea in abatement. The substance of that plea is that the court of chancery in the Montgomery district before the commencement of this suit, at the suit of the holders of bills of the bank had obtained possession of the bank, of its assets, by the appointment of a receiver, and that the receiver and the creditors, by bills, had commenced a suit in that court against the stockholders; that the defendant (Pallord) is a party to that bill with other stockholders, and that the court had jurisdiction.

The question arises on this plea, whether the Circuit Court of the United States can interfere to withdraw the money due by this plaintiff in error from the control of that court so long as that proceeding is going on.

The district court sustained a demurrer to this plea.

The principle applicable to this case has been settled by this court. It was announced in Wallace *vs.* McConnell, 13

P., 187. It was applied in Williams *vs.* Benedict, 8. H., 107. In Wiswall *vs.* Sampson, 14 H., 53, it formed the ground of an extreme decision. There A obtained a judgment in the United States court which was a prior lien on the lands of B, the defendant, C, another creditor, had filed a bill in the court of chancery to set aside an assignment fraudulent on its face, he being a junior judgment creditor in the State court, praying a receiver. A issued execution, caused a levy to be made; the sale was advertised.

A few days before the sale, and after levy and advertisement, a receiver was appointed and took possession under the chancery order.

A, nevertheless, went on and sold the property. This court held that the sale was a nullity, and reversed the judgment of the circuit court. The same principle was applied in 14 H, 368; 18 H., 573; 23 H., 90; 3 Wall., 334; 13 Wall., 679; 1 Curtis C. C., 178.

The jurisdiction conferred in sections 20 and 21 of the charter was exerted by the court of chancery before this suit was brought, and the conclusion of the court of Massachusetts, as stated in 15th Metcalf, that an attachment of this debt by a single creditor, after such a proceeding, becomes directly applicable to this cause.

III.

The charge of the court is manifestly erroneous. Supposing the bank to have no effects, and the capital stock to be $1,000,000, the loss of the plaintiff in error upon the debt of the bank on this statutory liability would be $70 a share, or fourteen thousand dollars. Estimating the capital stock to be $900,000, the loss would be about $77.50. But

this plaintiff, under the charge of the court, is made to lose $84.50.

The charge to the jury should have been to ascertain the entire debts of the bank, the entire capital of the bank, and the *pro rata* chargeable to the defendant in the action, of the entire debts as compared with his proportion in the capital stock. The court seems to have concluded that he was bound for his whole stock to any creditor who might sue him.

Jer Holdenwood
for Plff in Error

Supreme Court of the United States.

OCTOBER TERM, 1874.

No. 46.

ERROR FROM DISTRICT COURT, ALABAMA.

CHARLES T. POLLARD, PLAINTIFF IN ERROR.

vs.

JOHN F. BAILEY, ASSIGNEE, DEFENDANT IN ERROR.

The facts agreed between the parties show that Bailey, the plaintiff in the Court below, produced bills of the Central Bank of the State of Alabama for the amount described in the verdict. That this bank became insolvent in 1865, and ceased to do business in 1869 and previously thereto; that C. T. Pollard is an owner of two hundred shares of stock, of the par value of $20,000; that the plaintiff demanded payment of these bills of him; that the capital stock subscribed for by individuals was $900,000 of the $1,000,000 mentioned in the charter, and that the issues of bills of the bank are $700,000 unpaid.

On these facts, on a clause in the charter of the bank, "that the State and individual stockholders, or any copartnership or body politic having shares in said bank, shall be bound *respectively* for all the debts of the bank *in proportion* to their *stockholden therein*," * * * (R., p. 8; Art. 2d,) the plaintiff claims to have a judgment for the entire sum he demands in his writ against Pollard in a suit at law. This was allowed by the Court in the charge to the jury. (Rec., p. 27.)

The error in this decision arises from a misapplication of this clause of the charter to the facts.

We agree that the clause creates a liability if taken alone or in connection with others; that this liability is a separate, distinct liability; that this liability is for a certain proportion of the debts.

But, on the facts stated, the amount recovered is larger than the liability. If the capital of the bank, as described in the charter, be the rule, the plaintiff, Pollard, is liable for $70 a share of the debts existing.

If the capital subscribed for be the rule of proportion, he is liable for $77.50 per share. The recovery is for $84.50, as for the rule, and that it depends on the capital specified in the charter. (10 Met. R., 556–7.)

II.

But the clause quoted above is not the only one applicable to this case. Sections 20, 21, 22 of the Charter (Rec. 10, 11) describe the mode in which the *insolvent* bank shall be liquidated. It authorizes the billholders to file a bill in chancery for a settlement of the affairs of the bank; to obtain an injunction upon its officers to restrain further action; to ascertain the fact of insolvency; to decree the settlement of its affairs; and to appoint a *receiver;* that the receiver shall apply the assets equally among the billholders; that when these are exhausted

the Court shall order an assessment upon the stockholders proportionally, which the receiver shall collect and pay over the sum collected among the billholders—the amount is to be collected from the stockholders "*severally in proportion to his stock.*"

In 1869, billholders, having above $85,000, filed this bill, obtained this injunction and the decree of insolvency, and the appointment of the receiver, as provided in the charter. In 1870, these billholders, whose bill is for themselves and such as might become parties in each case with the receiver for the purpose of having the assessment and the collection made from the stockholders—all of the stockholders are parties defendant to the last bill, and this bill is now pending in the Court of Chancery. The pendency is pleaded, in abatement and in bar, and the facts are argued upon in the agreement in the record—pleas, R, 13, 14, 15, 16; agreement, R., 18; the bill is a part of the record, R. 19.

Upon this condition of facts we insist that this suit cannot be maintained. The Charter provides for a rateable and equal apportionment of the money to be collected from the stockholders among the creditors of the bank, and provides for the collection of this money by the receiver.

This course was adopted two years before the suit of the plaintiff Bailey, and the Chancery Court has acquired jurisdiction of the cause, and the fund is in *gremio legis.* The plaintiff cannot maintain a suit against Pollard, whose liability under the Charter has been subjected to the operation of the decree already rendered and by the bill to enforce that liability.

10 Metcalf Rep., 525—580.
27 N. Y. Rep., 393.
2 Lindley on Part.. 1310.
46 N. H., 371.
46 N. Y. R., 120.
3 Hare, 472.
7 Paige, 513.

3 McN. & G., 104.
8 Wall., 498.
14 How., 368.
18 How., 573.
18 Wall., 679.
1 Cart. C. C. R., 178.
20 Beev., 332.
L. R., 1 Ch. Ap., 538.
L. R., 6 Q. B., 101, 766.

All of which is respectfully submitted.

J. A. CAMPBELL,
for Plaintiff.

Supreme Court of the U. S.

OCTOBER TERM, 1874.

No. 46

ERROR FROM DISTRICT COURT, ALABAMA.

CHARLES T. POLLARD, *Plaintiff in Error*,

vs.

JOHN F. BAILEY, *Assignee, Defendant in Error.*

Murphy & Co., Printers, Publishers, Booksellers & Stationers, Balt.

In Supreme Court of the United States.

CHARLES T. POLLARD,

vs. } No. 319.

JOHN F. BAILEY, Assignee in Bankruptcy of Fowler & Sommerville.

In error to the District Court of the United States for the Middle District of Alabama.

BRIEF OF J. A. ELMORE, FOR THE DEFENDANT IN ERROR.

In Supreme Court of the United States.

CHARLES T. POLLARD,

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In error to the District Court of the United States for the Middle District of Alabama.

BRIEF OF J. A. ELMORE, FOR THE DEFENDANT IN ERROR.

1. The declaration was properly held to be sufficient. The Central Bank of Alabama, having ceased to act and being without funds and indebted, is in law deemed to be dissolved, so far as to give the remedy afforded against the shareholders to the creditors of the corporation.

19 Johns. 456.
Hopk. 300.
8 Cowan, 387.
25 N. Y. 225.

This dissolution, or insolvency, being proved, the liability of the stockholders, as declared by its charter, becomes *absolute*, and there is no valid objection to its enforcement at law.

Bank of Poughkeepsie v. Ibbotson, 24 Wend. 473.
Van Hook v. Whittock, 3 Paige, 408.
Simpson v. Spencer, 15 Wend. 548.
Garrison v. Howe, 17 New York, 458.

Wood et al. v. Dummer et al., 3 Mason, 308.
Bullard v. Bell, 1 Mason, 243.
Ang. & Ames on Corp. §§ 624–5–6.
Matter of the Hollister Bank, 27 N. Y. 399, 300.
Story v. Furman, 25 N. Y. 224.
18 New York, 218.

The election to go into equity must be at the election of the creditors, and the difficulty of the stockholder in protecting himself beyond the statute liability has never been suggested as a ground for proceeding in equity.
24 Wend., *supra*.

The liability is several and direct, and not collateral. The measure of damages is different in each case, depending on the number of shares held; each stockholder is responsible to the amount of stock held by him.
Bullard v. Bell, 1 Mason, 243.
24 Wend., *supra*.
17 New York, 463.
18 New York, 218.
27 New York, 398.

Whenever a statute imposes a legal obligation upon one party to pay money to another, the person to whom the payment is to be made may maintain an action of debt, or assumpsit, for the money.
Bullard v. Bell, 1 Mason, 243.
3 Paige, 416.
1 Chit. Plead. 106, 112.
Blackburn v. Baker, 7 Por. 284.

Though the charter of the bank in this case gives the creditor a particular remedy, it at the same time expressly provides that nothing therein contained shall be construed so as to deprive a creditor of the right to sue in any other appropriate mode of proceeding.
Sec. 22 of Charter, Record, p. 11.

2. The demurrer to the plea in abatement, and to the same plea filed as the second plea in bar, was properly sustained. These pleas only set up the pendency of a creditor's bill filed in pursuance of the twenty-first section of the charter of the bank for the administration of the assets of the bank. They do not allege any decree of the court on this creditor's bill, filed on the 5th of September, 1870. And until there is a decree in a creditor's suit, the plaintiff therein is *dominus litis*, so that he may deal with the suit as he pleases. Until such decree, the plaintiff below could have no interest in the suit, and was, consequently, not debarred from collecting his debt by an independent action.

1 Story's Eq. (Redfield's ed.) § 548, note 3; § 549.
Woodgate v. Field, 2 Hare's Rep. 211, 212.
Paxton v. Douglas, 8 Ves. 520.
Kerr on Injunctions, p. 108.

This right of the creditor of the bank to obtain payment from an individual shareholder does not interfere with the right of any other person, nor does it do the defendant any injury, as he may plead in the pending suit against him in chancery that he has paid in full, or in part, upon his individual liability.

Matter of the Hollister Bank, 27 N. Y. 398.
17 New York, 458.

And if this right did not exist, a creditor's bill might by collusion be kept on the docket of some court until the creditors were barred by the statute of limitations and then dismissed. The slow progress the creditor's suit seems to have made in this case, shows the wisdom of the law in providing that individual creditors should not be restrained until a decree has been rendered in the creditor's suit. And the charter of the bank expressly reserves to the creditor the right of proceeding in any other appointed mode of proceeding.

Sec. 22 of Charter, Record, p. 11.

3. The court below also properly sustained the demurrer to the third plea.

Record, p. 16.

The third plea purports only to answer a part of the plaintiff's demand, and yet does not enable the plaintiff to take judgment upon the residue on account of indefiniteness. Neither does it answer sufficiently any part of the cause of action. The fact that William Fowler, one of the firm of Fowler & Sommerville, was a stockholder of the bank, and that *his* assignee might be made liable to creditors of the bank, is certainly no reason for the position, asserted in the plea, that the assignee of the *firm* of *Fowler & Sommerville*, representing creditors of that firm, should make any abatement of his demand against *the debtors of the firm*. If Fowler had been indebted to the defendant directly, it could not be set up against a recovery by the firm of Fowler & Sommerville on a firm debt.

Ross v. Pearson, 21 Ala. 473.

The partnership and individual estates of the members are administered in bankruptcy, and in equity, when insolvent, as if there was no connection between them.

Collyer on Part. §§ 920, 990, 1010.

Parsons on Part. pp. 480–1.

4. The fourth plea, (Record, 16,) like the third, pleads to a part only of the demand, and does not enable the plaintiff to take judgment as to the residue. It asserts also that the shareholder is not liable directly to the creditors of the bank to the extent of his stock therein. The language of the charter of the bank imposing the personal liability upon its stockholders for the debts of the corporation, is found in article 2d of the fundamental rules of the corporation, (Record, page 8,) and is in the following words, viz: "That the State and individual stockholders, or any copartnership or body politic, having shares in said bank, shall be bound *respectively* for all the debts of the bank in proportion to their stock holden therein, and this provision shall in no wise affect or impair the provision of the thir-

teenth section of this act." The thirteenth section referred to is found on page 7 of the record, and provides that the shares of stock shall be assignable, according to rules of the bank; provided "that in case of the failure of the bank, within six months after any such transfer or sale of stock, the party selling and the party purchasing said stock shall each be held liable for the payment of the debts of the bank in proportion to the stock so transferred." * * * It is evident that the words "*in proportion*" in the sections above quoted mean "to the extent of," or "not exceeding the amount of," and were intended solely for the purpose of restraining the otherwise unlimited liability created by the previous words to a liability not exceeding the amount of the stock. All of the cases hold that the liability is *several*, *direct*, and to the extent of stock.

Ang. & A. on Corporations, §§ 625–6–7, and authorities there cited.

Bullard v. Bell, 1 Mason, 243.

Matter of the Hollister Bank, 27 N. Y. 398, *et seq.*

17 New York, 468.

18 New York, 218.

5 Hill, 461.

5. On the general issue there was no conflict of evidence, the agreed statement of facts (Record, p. 18,) settles every matter essential to sustaining the plaintiff's action.

J. A. Elmore
for deft. in Error